IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 816 of 2003 (M/B)

Dinesh Kumar Agrawal
S/o Sri Keshva Saran Agrawal,
R/o Indra Colony,
Ramnagar Road, Kashipur … Petitioner

Versus

1. State of Uttaranchal through
Secretary (Revenue),
Uttaranchal Sashan, Dehradun

2. The Lokayukt Uttaranchal,
Lokyukt Office 218 Krishna Nagar,
Dehradun.

3. The District Magistrate,
Dehradun.

4. Bhagwan Das S/o Late Dhani Ram
R/o 36 Manu Ganj Dehradun …Respondents

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Mr. L.P.Naithani, Senior Advocate for the petitioner.
Mr. K.P.Upadhyay, Standing Counsel for the State of Uttaranchal.
Mrs. Tehmina Punwani, Senior Advocate for the respondent no. 4.

JUDGMENT

Coram: Hon. Rajeev Gupta, C.J.
Hon. P.C. Verma, J.

P.C. Verma, J. (Oral)

1. This writ petition has been filed by the petitioner praying for a writ in the nature of certiorari quashing the order dated 08.08.2003 contained in Annexure 30 to the writ petition and all proceedings thereon and a writ of mandamus commanding the respondent no. 2 not to entertain any right in respect of Khasra No. 383/01 and Khasra No. 286/1 area measuring 190 and 0275 hectare respectively of village Bagral Tehsil Sadar, District Dehradun.

2. The case of the petitioner is that the above mentioned Khasra nos. 283/1 and 286/1 were initially entered in the name of Rahim Bax s/o Ali Bax in 1356 Fasli (1948) as hereditary tenants. U.P. Act No. 10 of 1949 known as the United Provinces Agricultural Tenants(Acquisition of Privileges) Act was enacted by the Legislature of U.P. which was extended to the whole of U.P. except the areas specified in the First Schedule of United Provinces Tenancy Act 1939 and the Pargana of Kaswar Raja in the District of Dehradun. The area of Dehradun was not excluded for the application of the said Act. This Act was enacted for the purpose of acquisition of intermediaries rights in the area of U.P. for the purpose to recognize the rights of intermediaries' holders. Petitioner has stated that the United Provinces Zamidari Abolition and Land Reform Bill has already been introduced in the Legislature which provides for the Zamidari rights including the several land reforms. The said bill provided for contribution by the tenants and payment of their annual rent. The rent so paid could be reduced by half and they could completely be protected on any ground. The balance was to be paid by the Provincial Government so that the U.P. Zamidari Abolition and Land Reforms Bill could be declared. On 21.06.1950, Sri Rahim Bax deposited ten time rent and was given a Sanad by the State of U.P. The said receipt and Sanad are Annexure 1 and 2 respectively to the writ petition. On 01.07.1952 U.P. Zamidari Abolition Act was enforced in the U.P. by which hereditary intermediary were given rights which were known as Bhoomidhar, Sheeshdhar and Asami. Section 340 of the U.P.Zamidari Abolition and Land Reforms Act 1950 provides that the rights created under the Act No. 10 of 1949 aforesaid would deem to be right created under the Z.A. and L.R. Act. According to the petitioner, since Rahim Bax has already paid the entire rent under Act of 10 of 1949 he was not required to pay extra amount under the Z.A. and L.R. Act being Sanad holder and his rights were recognized by the Government of U.P. and his name was mutated in the Revenue Records as Bhumidhar w.e.f. 1.7.1952. The petitioner has further averred that Rahim Bax never left India and was continuing to live in India till he died sometime in the year 1970 leaving behind his wife Sarifan and three sons, namely, Abdul Rahman, Zummadin and Modh. Yasim of Village Bagral, where the

property is situated. Before his death he kept on paying revenue rents between 1366 to 1370 Fasli. He also paid increased rent vide order of increased rent of 1366 to 1370 Fasli (Annexure 4). After the death of Rahim Bax, names of his three minor sons were entered in the Revenue Records through his mother Sarifan. As the property was in the name of minors, therefore, permission was obtained from the District Judge, Dehradun for the sale of the property so that the interest of the minors could be protected. Ultimately the said property was sold in favour of O.C. Kundan in the year 1980. In the year 1991 O.C.Kundan himself sold the property to one Sri Prem Prakash and Smt. Rashmi through two sale deeds dated 27.12.1990. On 11.09.1991 Sri Prem Prakash and Smt. Rashmi sold the property to one Dinesh Kumar and his two sons Sri Divya Agrawal and Sri Salabh Agrawal. The names of these three persons were mutated in the revenue records vide order dated 13.07.1998 of the Naib Tehsildar Dehradun. Accordingly, the petitioners are in peaceful possession of the property in question.

3. Due to partition of India, assets and liabilities of the then nationals were to be governed by the Provisions of Administration Evacuee Property Act 1950. Under this a Custodian was appointed and property was to be declared as Evacuee Property. On declaration of being evacuee property, it would vest in the Custodian, who would take possession. The custodian with the prior approval of the Central Government could auction and sale the property and also the land could be transferred by him. The Parliament enacted an Act known as Displaced Persons Act 1954 by which compensation to the persons entitled as displaced persons could be given. After the partition of the country, the Department of Custodian under the 1950 Act issued notices to practically all the Muslims for the purpose of determining whether they would be entitled to declare their areas as evacuee property. Accordingly on 10.10.1952, a notice was issued to Rahim Bax for appearance on 11.11.1952 to decide whether he has migrated to Pakishtan or not. It is not known to the petitioner whether Rahim Bax filed any objection or not. On the assumption that he did not file any objection an order was passed on 11.11.1952 alleging that Rahim

Bax is reported to have migrated to Pakistan and consequently his tenancy was occupied by the Custodian Evacuee Property. According to petitioner, Rahim Bax had already acquired right of Bhumidhari on 11.7.1052 much before the order dated 11.11.1952 w.e.f. 1.7.1952. The decision of the Custodian was meaning less as it could not be proved that Rahim Bax was migrated to Pakistan. His name was entered in the revenue records and after his death in the year 1970 his sons disposed of the property by registered sale deed in favour of O.C.Kundan. They are still living in India in village Bagral and his wife is claiming widow pension and she is getting benefit of being wife of Rahim Bax. The case of the petitioner is that under the mechanical allotment order under the Provision of 1954 Act, Dhani Ram was allotted certain property on quasi permanent basis in Dehradun in Village Bagral in the year 1955. Earlier it was Khasra no. 233 and 266 but somebody got the same changed as 283 and 286. On 09.07.1959, Sri Dhani Ram reported the matter to Custodian and submitted that he was not interested in the said property and as such refused to take possession. On 26.05.1960, the Managing Officer under the Provisions of 1954 Displaced Persons Act wrote to the Settlement Commissioner, Lucknow that Dhani Ram has refused to accept the allotment. Subsequently, the land was vested in Gaon Sabha in 1992 because it was not in occupation of anyone. According to the petitioner, the claim of Gram Sabha was untenable because the petitioner continued to be in possession of the said land, which was entered in his name in the revenue records.

4. On 18.08.1998, an affidavit was filed by Bhagwan Das s/o Dhani Ram (Annexure 21 to the writ petition) stating that after the death of Dhani Ram he had no knowledge that his father had left any property and accordingly made a request that his name may be entered in the revenue record in the place of Gaon Sabha. The said request was rejected by the Sub-Divisional Magistrate, Dehradun vide order dated 17.07.2000. A revision no. 92 of 1999 was filed by Bhagwan Das against Gram Sabha and U.P. Government for mutation of his name in the Revenue Record, in which petitioner was not a party. The said revision was allowed by the Additional District Commissioner without applicant being party to the

same. On the date when the revision was allowed, the name of the petitioner was already mutated in the revenue record. The State of Uttaranchal filed a Revision against Sri Bhagwan Das being 2/2001-2002 which was dismissed on 16.09.2002. In the said revision, the petitioner was not a party. The District Magistrate, Dehradun called for a report from the Sub-Divisional Magistrate, Dehradun and the Sub-Divisional Magistrate Dehradun after due verification and survey found that the petitioner was in occupation and his name was entered in the revenue records and the only remedy available to Sri Bhagwan Das was to establish his title before the competent Court. On creation of the State of Uttaranchal a similar complaint was made by him and another survey was made. In that survey it was found that the property in custody of the petitioner was on the basis of valid title and accordingly on 2.4.2003, the S.D.M., Dehradun submitted a report to the District Magistrate and accordingly District Magistrate passed an order on 05.05.2003 directing the parties to file a suit for declaration of their title u/s 209 of the Z.A. and L.R. Act before the competent court.

5. On 14.05.2003, Bhagwan Das filed a compliant before the Lokayukta. The Lok Ayukta Uttaranchal vide his order dated 08.08.2003 passed the order against the petitioner. The order of the Lokayukta is quoted as under:

> " The District Magistrate instead of appearing before me has sent Sub-Divisional Magistrate who has joined as S.D.M. Dehradun very recently. According to him, he could not lay his land on the file and after examining the factual controversy involved, he will submit a detailed report to the district Magistrate, thereafter, matter should be thrashed out. The stand of the District Magistrate which has been taken now is that the possession cannot be given to Sri Bhagwan Das over the plot in question as in the revenue record there is an entry of the another person as well. This stand is inconsistent with the earlier stand taken by District Magistrate. This case has a chequered history. The plot in question was allotted to late Sri Dhani Ram, as tenure holders migrated to Pakistan and the property was declared evacuee property. Late Sri Dhani Ram approached the authorities concerned to the effect that the plots in question were not arable and hence instead of land compensation be given to him. The Central Government did not agree to that proposal. In the meantime, the possession of the plots in question were taken over by Gram Sabha which resulted into litigation. Sri Bhagwan Das the son of late Sri

> Dhani Ram filed an appeal before the Commissioner who upheld the contention of Sri Bhagwan Das that the plot in question belonged to him and entries of Gram Sabha or any other person were fictitious. Thereafter, a revision was filed by the State of U.P. against the judgment of the Commissioner. It appears that the revision was rejected and the order of the Commissioner was upheld. As the Gram Sabha had taken over possession from Sri Bhagwan Das, it was contended that Gram Sabha should hand over the possession of the plots in question to Sri Bhagwan Das and it is the duty of the State to deliver the possession of the land in question to Sri Bhagwan Das, without asking the complainant to file the suit under section 209 of the U.P. Land Act. The entries of persons who claim the right of the land, from a person or his legal representatives who had migrated to Pakistan is nothing but fictitious. The Collector should advert to this question and submit a report. The copy of this order should be sent to the Collector. Put up the file on 22.09.2003."

Aggrieved by the above order of the Lok Ayukta, the petitioner has filed this petition.

6. A counter affidavit has been filed by Sri Bhagwan Das stating therein that the Additional Tehsildar in connivance with the land-mafias submitted a report on 25th March 2003 to the S.D.M. to give undue advantage and benefit to them. But, the S.D.M. based his report on totally false and fabricated facts and submitted it to the District Magistrate. The District Magistrate after summoning the original file of evacuee property and the revenue records of 1360 Fasli was convinced on the claim of the respondent, but may be due to the pressure of the land-mafias declined to give any relief to the respondent and maintained that the respondent may once again file his claim for ownership and possession u/s 209 of the U.P. Zamidari Abolition Act. It is further stated in the counter affidavit that respondent having no option, in spite of the fact that the highest Revenue Authority i.e. the Chief Revenue Commissioner has confirmed the order of the Additional Commissioner (Administration) regarding the ownership and possession of the respondent, filed a complaint before the Lok Ayukta and on the basis of the facts narrated in this counter affidavit, the Lok Ayukta had passed the order under challenge in this writ petition, which is in the fore-corners of law. Thus, the petition is not maintainable and is liable to be dismissed.

7. In the present case, the questions that arise for consideration are whether the impugned order dated 08.08.2003 passed by Lokayukta is within jurisdiction or the Lokayukta has exceeded his jurisdiction conferred U/Ss 7 and 8 of the U.P.Lokayukta and Up-Lokayuktas Act, 1975 and whether Lok Ayukta has any right to determine private rights of the individuals.

Section 7 of the U.P.Lokayukta and Up-Lokayuktas Act, 1975 deals with the matters which may be investigated by Lokayukta. Section 7 is reproduced as under:

> **" 7. Matters which may be investigated by Lokayukta or Up-Lokayukta-** (1) Subject to the provisions of this Act and on a complaint involving a grievance or an allegation being made in that behalf, the Lokyukta may investigate any action which is taken by, or with the general or specific approval of-
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> (i) a Minister or a Secretary; and
> (ii) any public servant referred to in sub-clause (ii) or sub-clause (iv) of clause (j) of Section 2; or
> (iii) any other public servant being a public servant of a class or sub-class of public servants notified by the State Government in consultation with the Lokayukta, in this behalf.
>
> (2) Subject to the provisions of this Act and on a complaint involving a grievance or an allegation being made in that behalf, an Up-Lokayukta may investigate any action which is taken by or with the general or specific approval of any public servant not being a Minister, Secretary or other public servant referred to in sub-section (1).
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> (3) Notwithstanding anything contained in sub-section (2), the Lokayukta may, for reasons to be recorded in writing, investigate any action which may be investigated by an Up-Lokaykta under that sub-section.
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> (4) Where two or more Up-Lokyuktas are appointed under this Act, the Lokayukta may, by general or special order, assign to each of them matters which may be investigated by them under this Act:
>
> Provided that no investigation made by an Up-Lokyukta under this Act, and no action taken or thing done by him in respect of such investigation shall be open to question on the ground only that such investigation related to a matter which is not assigned to him by such order".

Section 8 of the Act deals with the matters which are not subject to investigation by the Lokayukta or an Up-Lokyukta. Section 8 of the Act reads as under:

> **"8. Matters not subject to investigation:** (1) Except as hereinafter provided, the Lokayukta or an Up-Lokayukta shall not conduct any investigation under this Act:
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> (a) except on a compliant made under and in accordance with Section 9; or
> (b) in the case of a complaint involving a grievance in respect of any action-
> (i) if such action relates to any matter specified in the Third Schedule; or
> (ii) if the complainant has or had any remedy by way of proceeding before any Tribunal or Court of law
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> Provided that nothing in sub-clause (ii) shall prevent Lokyayukta or an Up-Lokayukta from conducting an investigation if he is satisfied that such person could not and cannot, for sufficient cause, have recourse to a remedy referred to in that sub-clause.
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> (2) The Lokayukta or an Up-Lokytukta shall not investigate any action-
> (a) in respect of which a formal and public inquiry has been ordered under the Public Servants (Inquiries) Act, 1850 (Central Act 37 of 1850), by the Government of India or by the State Government; or
> (b) in respect of a matter which has been referred for inquiry under the Commissions of Inquiry Act, 1952 (Central Act 60 of 1952), by the Government of India or by the State Government.
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> (3) The Lokayukta or an UP-Lokyukta shall not investigate any complaint which is excluded from his jurisdiction by virtue of a notification issued under section 19.
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> (4) The Lokayukta or an Up-Lokyukta shall not investigate-
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> (a) any complaint involving a grievance, if the complaint is made after the expiry of twelve months from the date on which the action complained against becomes known to the complainant.
> (b) Any complaint involving an allegation, if the complaint is made after the expiry of five years form the date on which the action complained against is alleged to have taken place:
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> Provided that Lokayukta or an Up-Lokyukta may entertain a complaint referred to in clause (a), if the complainant satisfies him

that he had sufficient cause for not making the complaint within the period specified in that clause.

(5) In the case of any complaint involving a grievance, nothing in this Act shall be construed as empowering the Lokayukta or an Up-Lokyukta to question any administrative action involving the exercise of a discretion except where he is satisfied that the elements involved in the exercise of the discretion are absent to such an extent that the discretion cannot be regarded as having been properly exercised.

(6) The Lokayukta or an Up-Lokyukta shall not investigate any complaint involving a grievance against a public servant referred to in sub clause (iv) or sub-clause (v) of clause (j) of section 2."

8. Section 2 (d) of the U.P. Lokayukta and Up-Lokyuktas Act, 1975 defines "grievance" as under:

"(d) "grievance" means:-

(i) a claim by a person that he sustained injustice or undue hardship in consequence of maladministration, or

(ii) a complaint to the effect that an authority empowered to make appointments to a public service or post in connection with the affairs of the State of Uttar Pradesh has after the commencement of the U.P. Lopkayukta and Up-Lokayuktas (Amendment) Act, 1989 made any appointment in breach of the quota of reservation for members of Scheduled Cases or Scheduled Tribes laid down by the State Government."

Section 2(f) of the U.P. Lokayukta and Up-Lokayuktas Act, 1975 defines "misadministration" as under:

"(f) "misadministration" means action taken or purporting to have been taken in exercise of administrative functions in any case,-

(i) where such action or the administrative procedure or practice governing such action is unreasonable, unjust, oppressive or improperly discriminatory; or

(ii) where there has been negligence or undue delay in taking such action or the administrative procedure or practice governing such action involves undue delay".

9. Thus, it is clear that complaint may be made to the Lokayukta by a person in case he has a grievance that he had sustained injustice or undue hardship in consequence of maladministration; or that an authority empowered to make appointments to a public service or post in connection with the affairs of the State had made any appointment in breach of the quota of reservation for members of Scheduled Castes or Scheduled Tribes

laid down by the State Government. There may be “maladministration” only when an action has been taken in exercise of administrative functions, and such action or the administrative procedure or practice governing such action is unreasonable, unjust, oppressive or improperly discriminatory; or where there has been negligence or undue delay in taking such action or the administrative procedure or practice governing such action involves undue delay. In the present case, the grievance is with regard to private rights of the individuals and there is no “maladministration” by the authorities. Therefore, the Lokayukta has no authority in the eye of law to entertain such a grievance.

10. A bare perusal of the above quoted Sections makes it clear that the Lokayukta cannot entertain a complaint involving a grievance in respect of any action in case the complainant had any remedy by way of proceeding before any Tribunal or Court of law. The proviso to section (7) of the Act is also not attracted in the present case as it is settled law of interpretation that a proviso cannot override the main Section. There is undoubtedly a chequered history and the claims of the parties and the counter claims regarding the title. In our opinion, the Lokayukta has no right to decide private rights of the individuals and he cannot investigate in the matter if the complainant has remedy by way of proceeding before any Tribunal or Court of law. Thus, it is clear that the Lokayukta has exceeded his jurisdiction. The respondent has a remedy under section 229-B of the U.P. Zamidari Abolition and Land Reforms Act, 1950 and he can redress his grievance by filing a declaratory suit in competent Court.

11. In view of the above, the writ petition is allowed. The order dated 08.08.2003 passed by the Lokayukta Uttaranchal contained in Annexure 30 to the writ petition is hereby quashed. No order as to costs.

(P.C. Verma , J.) **(Rajeev Gupta, C.J.)**

14.02.2006
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